IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIDNARY ORIGINAL CIVIL JURISIDICTION

CHAMBER SUMMONS NO.1233 OF 2003
IN
NOTICE NO.838 OF 2003
IN
EXECUTION APPLICATION NO.225 OF 2003
IN
ABRBITRATION REFERENCE NO.892 OF 2001

R.C.Goenka .. Applicant

Vs.

Manolata Investment P.Ltd. .. Respondent

Mr.R.Shah with R.Goenka and Mr.P.Das i/b H.Mishra for the applicant

Mr.S.Purohit for the respondent no.1, 3 to 5 i/b Mr.H.K.Sudhakar

CORAM: S.U. KAMDAR, J.

DATE : 23RD MARCH, 2005

P.C. :

1. The present Chamber Summons is taken out under Order XXI Rule 37 of the Code of Civil Procedure for arrest of the directors of the company who are impleaded as respondent no.2 to 5. It is an admitted position that there is no award decree passed against respondent no.2 to 5 which can be executed against them. The learned counsel for the applicant contends that they are being added to the present application so

that an order of arrest can be passed against them since they are managing the affairs of the respondent no.1 company.

The provision of Order XXI Rule 37 of Civil Procedure Code inter alia provides for execution of decree by way of arrest and detention in civil imprisonment of the judgment debtor. The said order reads as under:

> "37. Discretionary power to permit judgment-debtor to show cause against detention in prison-(1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court shall instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison.
>
> (Provided that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court.
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> (2) Where appearance is not made in obedience to the notice, the Court, shall if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor."

2. In the present case there is a decree only

against respondent no.1 which is a company, a legal entitee and thus cannot be arrested. Respondent no.2 to 5 are directors of the company. There is no decree passed against the directors which can be executed and therefore the provision of order XXI Rule 37 in so far as respondent no.2 to 5 are concerned is not applicable. The present applications to arrest them when they are not the judgement debtors is not maintainable. Company being a separate legal entity the decree passed against the company cannot be executed against the directors of the company. I do not find any merits in the present Chamber Summons. Chamber Summons dismissed accordingly. No order as to costs.